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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

JEFFERY, JOHN A

ART UNIT	PAPER NUMBER
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3742

DATE MAILED: 06/02/2004

19

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/939,993

Applicant(s)

POLLACK, SHIRLEY

Examiner

John A. Jeffery

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) 8-12 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 13-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 May 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Reopening of Prosecution -- New Ground of Rejection After Appeal

In view of the remand from the Board of Patent Appeals & Interferences ("Board") filed on Mar. 24, 2004 directing the examiner to reevaluate patentability of the appealed claims in light of certain prior art of record (Board Decision, p. 8-10), PROSECUTION IS HEREBY REOPENED. A new ground of rejection is set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) request reinstatement of the appeal.

If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1.130, 1.131 or 1.132) or other evidence are permitted. See 37 CFR 1.193(b)(2).

Statutory Text in Previous Office Action

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior office action.

Claim Rejections - 35 U.S.C. § 102 or § 103

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this action:

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A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 5-7, and 13-15 are rejected under 35 USC 102(b) as being anticipated by Chimera (US 5,394,620), or, alternatively, under 35 USC 103(a) as being unpatentable over Chimera (US 5,394,620) in view of Caruso (US 3,836,750). Chimera (US 5,394,620) discloses a device for drying a moist region of a person's body comprising: a housing 10 having an air inlet 14 and an air outlet 16, an electric fan 22 mounted within the housing so as to blow air toward the air outlet, battery 20 connected to the electric fan, and an end nozzle protruding from the air outlet. See Figs. 1, 2, and 7.¹ As best seen in Fig. 2, the bristles of detachably-mounted brush 33 not only function as a "resilient outermost end" protruding around the outlet, but also would vent air to the atmosphere between the bristles in the event the outlet was blocked.

The "means for venting" limitation in claims 1 and 6 is construed as a means-plus-function limitation under 35 U.S.C. § 112, sixth paragraph since (1) the term "means for" is used; (2) a function is included; and (3) the limitation is not modified by sufficient structure, material, or acts in support thereof. Accordingly, the examiner construes the limitation to cover the corresponding structure, material, or acts described in the specification and equivalents thereof. See *In re Donaldson Co.*, 29 USPQ2d 1845 (Fed. Cir. 1994).

Here, because the bristles would inherently perform an air venting function upon blocking the outlet in a manner commensurate with apertures formed in the nozzle, the

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brush structure is equivalent to the air venting means disclosed in the instant specification. Regarding claim 14, note recharging stand 19 that recharges the batteries in the handheld blower when not in use.

But if such inherency of the air venting means of Chimera (US 5,394,620) is disputed, then providing a venting nozzle in conjunction with Chimera (US 5,394,620) would have been obvious to one of ordinary skill in the art. Because both Chimera (US 5,394,620) and Caruso (US 3,836,750) are electrically-heated air blowers (i.e, in the same field of endeavor), both are equally subject to backpressure problems upon outlet blockage. Also, Chimera (US 5,394,620) in col. 4, lines 63-68 teaches the desirability of preventing excessive heat in tube 14. Accordingly, it would have been obvious to one of ordinary skill in the art to incorporate an end nozzle structure with an integral venting means such as that disclosed by Caruso (US 3,836,750) (elements 82-86) in the dryer of Chimera (US 5,394,620) to prevent excessive back pressure and prevent excessive temperatures.²

Claims 1-3, 5-7, 13, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Caruso (US 3,836,750) in view of DE2637484. Caruso (US 3,836,750) discloses a device for drying a moist region of a person's body (the hair and scalp) comprising a housing 12 having an air inlet 54 and an air outlet 80, 84; an electric fan 40 mounted within the housing, so as to blow air toward the air outlet; an electric power source 56 connected to the electric fan; and end piece (nozzle 82) protruding

¹ See also Board Decision, at 9 (accord).

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from the air outlet; and a means (radially disposed ports 86) for venting air to the atmosphere, bypassing the air outlet, if the outermost end 84 of the air outlet is blocked.

See Fig. 1-4 and col. 3, lines 39-49.³

The claims differ from Caruso (US 3,836,750) in calling for end piece to have a resilient outermost end. But providing resilient outermost end pieces in electrically heated air blowers is conventional and well known in the art as evidenced by DE2637484 noting rubber nozzle 1 that protects the surface to be heated from damage by contact therewith. In view of DE2637484, it would have been obvious to one of ordinary skill in the art to provide a resilient protective end piece around the outlet of Caruso (US 3,836,750) to protect the object to be heated (i.e., the body) from contact with the nozzle.

Regarding claims 2 and 13, although Caruso (US 3,836,750) discloses providing electric power from a mains power source via cord 56, powering electrically-heated air blowers from batteries is well known in the art so that the blower can be used in any location -- even areas remote from mains power sources. For example, DE2637484 teaches powering an electrically-heated blower from batteries that enables such remote use. In view of DE2637484, it would have been obvious to one of ordinary skill in the art to power the blower from batteries so that the blower could be used in areas remote from mains power sources.

² The Board also emphasized this issue. See *id.*, at 9-10.

³ See *id.*, at 8 (accord).

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Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Caruso (US 3,836,750) in view of either (1) DE2637484 and further in view of Martin (US 1,660,802); (2) Chimera (US 5,394,620) in view of Martin (US 1,660,802); or, (3) Chimera (US 5,394,620) in view of Caruso and further in view of Martin (US 1,660,802). The claim differs from the previously cited prior art in calling for a lamp. Providing a lamp in conjunction with a heated air blower, however, is conventional and well known in the art as evidenced by Martin (US1660802) noting lamp 46 in Fig. 2 that illuminates the area to be heated. In view of Martin (US1660802), it would have been obvious to one of ordinary skill in the art to provide a lamp in conjunction with the previously-described heated air blower so that the area to be heated is illuminated via a lamp integrated with the blower. Such an integrated arrangement thus precludes the need for additional lights and electric power sources thus reducing apparatus parts.

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Caruso (US 3,836,750) in view of DE2637484 and further in view of Chimera (US 5,394,620). The claim differs from the previously cited prior art in calling for electrical contacts adapted to allow recharging of the battery. But providing contacts on a handheld heated air blower for a rechargeable battery is conventional and well known in the art as evidenced by Chimera (US 5,394,620) noting recharging stand 19 that recharges the batteries in the handheld blower when not in use. In view of Chimera (US 5,394,620), it would have been obvious to one of ordinary skill in the art to provide a recharging means with electrical contacts on the previously-described blower to recharge the

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batteries when not in use, thus precluding the need to replace the batteries when they are run down.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John A. Jeffery whose telephone number is (703) 306-4601. The examiner can normally be reached on Monday - Thursday from 7:00 AM to 4:30 PM. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Denise Pothier, can be reached on (703) 308-0993. All faxes should be sent to the centralized fax number at (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

A handwritten signature in black ink, appearing to read 'John A. Jeffery', with a stylized, cursive script.

**JOHN A. JEFFERY
PRIMARY EXAMINER**

5/11/04